

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Shirldean Wood,)	C/A No.: 9:03-0672-27
)	
Plaintiff,)	
)	
v.)	ORDER
)	
Jo Anne B. Barnhart, Commissioner of Social Security,)	
)	
Defendant.)	
)	

On December 20, 2004, plaintiff filed a motion for attorney's fees and costs pursuant to the Equal Access to Justice Act ("EAJA"), 42 U.S.C. § 2412, on the basis that the position taken by the defendant in this action was not substantially justified. Defendant filed a response on January 5, 2005. Defendant filed a motion to amend its response on January 12, 2005, and filed an amended response that same day. Defendant's amended response indicates that she does not oppose plaintiff's request for fees, but objects to the hourly rate requested by plaintiff as well as the \$162.50 in clerical fees. Plaintiff filed a reply to defendant's response on January 14, 2005, conceding to the reduced hourly rate of \$144.48 and the non-payment of clerical fees. However, plaintiff requests payment for an additional 0.95 hours not included in her original petition as well as \$17.76 in costs that the defendant asks this Court to exclude.

Under the EAJA, a court shall award attorneys' fees to a prevailing party in certain civil actions against the United States unless it finds that the government's position "was substantially justified or that special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A). The district courts have discretion to determine a reasonable fee award and whether that award should be made in excess of the statutory cap. *May v. Sullivan*, 936 F.2d 176, 177 (4th Cir. 1991); *Pierce v.*

Underwood, 487 U.S. 552 (1988).

The Court overrules in part the defendant's response to the plaintiff's motion for attorney's fees. The Court orders the defendant to pay plaintiff the sum of \$3,947.62, or attorney's fees and costs representing 27.2 hours of work at a rate of \$144.48 per hour, and \$17.76 towards costs.

IT IS SO ORDERED.

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge

April 26, 2005
Florence, South Carolina